

CITY OF BELLEVUE, WASHINGTON  
ORDINANCE NO. 5106

AN ORDINANCE Renewing the Moratorium on the Acceptance of  
Applications for and Issuance of Land Use, Building and Development  
Permits and Business Licenses for Adult Entertainment and Adult Retail  
Uses

WHEREAS, the Bellevue City Council has previously determined, based on public testimony and other evidence and through findings of fact detailed in Ordinance Nos. 4602, 4692, 4735, and 5073, that adult retail and adult entertainment uses cause secondary effects that are detrimental to the public health, safety, morals and general welfare of the citizens of the City of Bellevue; and

WHEREAS, there are present within the City of Bellevue several adult retail establishments, whose stock in trade is devoted in whole or in substantial or significant part to books, magazines, cards, pictures, periodicals, prerecorded video tapes, disks, film or other such media, instruments, devices, equipment, paraphernalia, toys, novelties, games, clothing or other merchandise which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified anatomical areas, specified sexual activities, and sexual conduct, as those terms are defined in Bellevue Land Use Code Section 20.50.046 and Bellevue City Code Section 5.08.010; and

WHEREAS, there is evidence that the City could, in the near future, receive applications for adult entertainment or adult retail uses that would significantly increase the amount of commercial space characterized by such uses and located within the City; and

WHEREAS, the Bellevue City Code may not currently adequately address the various impacts to public health, safety, morals and general welfare that these uses present; and

WHEREAS, other cities in the surrounding Seattle-Tacoma metropolitan region and elsewhere in the country, have adopted ordinances regulating adult entertainment and adult retail uses, based upon evidence of the negative secondary effects of such uses;

WHEREAS, on June 11, 1998, the City Council enacted a six-month moratorium on the acceptance and processing of licensing applications for adult entertainment and adult retail uses, which will expire on December 12, 1998 so that the City Council members and city staff could more fully address and understand the potential negative secondary effects, in the form of health, safety and economic and aesthetic impacts, that these uses impose upon neighboring properties and on the community as a whole; and

WHEREAS, pursuant to the requirements of RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing on July 20, 1998 and found that

continuing with the moratorium was justified by the need to pursue review of existing information which demonstrates that there are negative secondary effects of adult entertainment and adult retail uses, and to review the City's Code and ordinances in a comprehensive fashion to determine whether they sufficiently address the secondary effects of such uses; and

WHEREAS, in order to allow staff sufficient time to thoroughly analyze all of the information staff has gathered during the six (6) month moratorium, to draft proposed code amendments, and to present such code amendments to the Community Councils and the full City Council, staff is requesting a six (6) month renewal of the adult moratorium; and

WHEREAS, RCW 35A.63.220 and RCW 36.70A.390 authorize cities to renew moratoria for additional six month periods upon holding a public hearing and a finding of necessity to renew the moratorium in order to completely address impacts of proposed legislation; and

WHEREAS, a public hearing was held on November 16, 1998 to consider a six month renewal of the adult moratorium; and

WHEREAS, the City Council has considered public testimony received at the November 16, 1998 hearing as well as all materials presented by staff; and

WHEREAS, RCW 35A.63.220 and RCW 36.70.390 provide that a city extending a moratorium shall adopt findings of fact prior to such renewal; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Findings of Fact. The Bellevue City Council hereby adopts the following Findings of Fact:

A. The City has determined previously, through public testimony and the receipt of other evidence, that adult entertainment and retail uses cause adverse secondary effects that are detrimental to the public health, safety, morals, protection of minors and the general welfare of the citizens of Bellevue.

B. Many of those adverse secondary effects are summarized in the findings of fact contained in Ordinance Nos. 4602, 4692, 4735, and 5073 which are incorporated herein by this reference. Those adverse secondary effects include significant criminal activity not limited to prostitution, illegal employment of minors, narcotics and alcoholic beverage law violations, breaches of the peace, tax evasion and harboring of persons with outstanding arrest warrants.

C. Those adverse secondary effects also include public sexual conduct on the premises of adult entertainment and retail businesses, which can facilitate prostitution

and related crimes. Such conduct also causes substantial public health and safety concerns, not limited to the spread of sexually transmitted diseases.

D. The City has reviewed studies from other cities concerning the adverse secondary effects arising from adult retail establishments (a subset of adult entertainment uses), whose stock in trade regularly features or devotes a substantial portion of its trade to entertainment or material characterized by an emphasis on specified anatomical areas, specified sexual activities, or specified sexual conduct as those terms are defined in Bellevue Land Use Code Section 20.50.046 and Bellevue City Code Section 5.08.010.

E. The City adopts by reference the studies from other cities that conclude that adverse secondary effects from such adult retail establishments include increased crime rates, depreciation of property values, deterioration of community character, and a decrease in the quality of life.

F. The City adopts by reference the conclusions contained in such studies from other cities that conclude that such adult retail establishments tend to concentrate in certain areas, and that the proximity of those establishments to sensitive uses such as schools, daycare, residential zones, places of religious worship and parks result in similar or increased adverse secondary effects.

G. Although reliance on these studies has resulted in the decision by the City to regulate the location of such adult retail establishments, the City believes that the characteristics of such establishments within the City may have an impact on the type and manner of regulation which the City chooses to employ. The City finds that additional review of other studies on the secondary effects of adult retail establishments is necessary to determine what regulations are appropriate.

H. Staff will prepare draft code amendments as a result of its further review of such studies to address the negative secondary effects of such adult uses for the City Council's consideration and adoption.

I. A renewal of the moratorium established by Ordinance No. 5073 is necessary to take such additional action.

Section 2. Recitals and Findings of Fact Incorporated. The recitals set forth on pages 1 through 3 of this Ordinance, and the findings of fact contained in Ordinance Nos. 4602, 4692, 4735, and 5073 are incorporated as if fully set forth herein and are hereby adopted as additional as Findings of Fact to the extent they are not inconsistent with the Findings of Fact adopted in Section 1 of this Ordinance.

Section 3. Renewal of Moratorium. The Bellevue City Council hereby determines that it is necessary for the moratorium enacted June 11, 1998, by Ordinance 5073, to be renewed for an additional six (6) month period. Accordingly, the moratorium shall not expire until midnight on June 10, 1999, unless sooner terminated by or extended by action of the City Council.

Section 4. Work Plan. During the moratorium, the City staff is directed to survey existing studies and evidence, as well as developing case law, and identify any negative secondary effects that are associated with adult retail portions of adult entertainment uses; determine whether any mechanisms exist by which these effects may be mitigated; and identify alternative, available means and locations within the City by which the City may accommodate access to constitutionally protected material, if any, and make recommendations to the City Council concerning any necessary and appropriate legislation and/or code amendments.

Staff shall present draft land use code amendments to the State Department of Community, Trade, and Economic Development ("CTED") for comment no later than sixty (60) days prior to the City Council holding a public hearing on the proposed amendments. In addition, staff shall present draft land use and business license code amendments to the East Bellevue Community Council and the Sammamish Community Council for comments no later than thirty (30) days prior to the City Council holding a public hearing on the proposed amendments. Within sixty (60) following the City Council public hearing, and passage of any ordinance amending these regulations, staff shall present the ordinance or ordinances to the East Bellevue Community Council and Sammamish Community Council for public hearings on the ordinance or ordinances and action by the community councils.

The timing of the presentation of the draft and final amendments to the community councils, and the City Council shall depend upon each body's existing work plan and available schedule. In the event that the City Council or the community councils are unable to complete their review and adoption of the amendments on or before June 10, 1999, staff will request an additional review of the moratorium.

Section 5. Temporary Use Permits. Notwithstanding the renewal of the moratorium in Section 2 above, any business that regularly features or devotes a substantial portion of its trade to entertainment or material characterized by an emphasis on specified anatomical areas, specified sexual activities, or specified sexual conduct as those terms are defined in Bellevue Land Use Code Section 20.50.046 and Bellevue City Code Section 5.08.010 which satisfies all criteria applicable to its underlying zone may be permitted under a temporary permit if it meets the following criteria:

A. It is not located or proposed to be located within six hundred-sixty feet (660') of:

1. Any residential land use district (R-1 - R-30);
2. Any single or multiple-family residence;
3. Any public or private school preschool - twelfth grade);
4. Any religious facility;
5. Any public park;
6. Any child care service or day care center;

7. Any community youth center;
8. Any massage parlor; or
9. Any other adult entertainment or adult retail use or activity.

For purposes of this subsection, 660 feet shall be measured pursuant to the requirements of Bellevue Land Use Code Section 20.20.127.C.

B. It meets other applicable criteria under the Bellevue City Code, including those under Chapter 20.30.M.140, for issuance of a temporary use permit.

C. Any license, permit or authorization issued and any temporary use established pursuant to this Section 4. shall terminate upon the expiration of the temporary period prescribed by the Bellevue Land Use Code for temporary use permits, and the holder of such license, permit or authorization and or the person establishing such temporary use shall acquire no right to the continuation of such license, permit, authorization or use beyond such temporary period. Continued operation of such use beyond the expiration of such temporary period shall require a new application for a license, permit or authorization and shall be subject to any regulations adopted during the period of the moratorium established by Ordinance 5073, or any extension thereof.

Section 6. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 7. Ratification. Any act consistent with the authority and prior to the effective date of the ordinance is hereby ratified and affirmed.

Section 8. Effective date. This ordinance shall take effect and be in force five days from the date of its passage.

PASSED by a majority of the City Council this 16th day of November, 1998 and signed in authentication of its passage this 16th day of November, 1998.  
(SEAL)

Mike Creighton, Mayor

Approved as to form:  
Richard L. Andrews, City Attorney  
Lori M. Riordan, Assistant City Attorney

Attest:  
Myrna L. Basich, City Clerk  
Published November 20, 1998